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Building Industry Association of Washington

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October 21, 2008

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ATTORNEY GENERAL
OF WASHINGTON

OCT 22 2008

GOVERNMENT COMPLIANCE
& ENFORCEMENT

ATTORNEY GENERAL
OF WASHINGTON

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Re: 1st Notice of Intent to Sue Evergreen Progress for Violations of RCW 42.17.080(2)

Dear elected officials:

The Building Industry Association of Washington (BIAW) submits this statutory notice of intent to sue Evergreen Progress, a political action committee, for numerous violations of reporting requirements in RCW 42.17.080(2). BIAW intends to bring a citizens action against Evergreen Progress under 42.17.400(4) if you do not commence an action within the time frames provided by statute.

Evergreen Progress concealed approximately one million dollars from the public by failing to report contributions in a timely manner. Those contributions were not properly reported on Evergreen Progress' Oct. 14, 2008 C-4.

RCW 42.17.080(2) states the requirements for the C-4:

"The report filed twenty-one days before the election shall report all contributions **received** and expenditures made as of the end of the **one business day** before the date of the report." (Emphasis added)

On its 10/14/2008 C-4, Evergreen Progress did not report any contributions or deposits made after 10/08/08. But, Evergreen Progress's 10/19/08 C-3, lists receipts dated 10/09/2008, 10/10/2008 and 10/13/2008, putting Evergreen in violation of RCW 42.17.080(2).

According to RCW 42.17.080(2), the following contributions should have been reported on the C-4 filed prior to 12:01 a.m. on Tuesday, October 14:

- \$815,000 from the Democratic Governors Association, with a date received of 10/10/2008

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- \$25,000 from Drive Committee, with a date received of 10/09/2008
- \$8,000 from 46 Electrical Workers PAC with a date received of 10/09/2008
- \$8,000 from UFCW Union Local #367 with a date received of 10/09/2008
- \$10,000 from the UA Local 32 P.A. Seg. Fund with a date received of 10/09/2008
- \$50,000 from the United Food and Commercial Workers with a date received of 10/09/2008
- \$50,000 from Working for Working Americans, with a date received of 10/13/2008
- \$35,000 from Washington Education Association, with a date received of 10/13/2008

All of the above-referenced contributions were not reported, as required, in the 21-day C-4 report. A reasonable person can only conclude that Evergreen Progress wished to "hide the ball" for an additional week.

This is exactly the type of situation that the legislature sought to prevent when it amended RCW 42.17.080 earlier this year. See Chapter 73, Laws of 2008 (HB 2448). Under prior law, the C-4 only had to reflect contributions received more than five days before the filing deadline. That period was changed to one business day before the deadline.

According to the legislative history of House Bill 2448, "[t]he PDC supports the requirement that these reports filed 21 days before the primary and general elections be current within one business day because with vote-by-mail, a large number of voters cast their ballots well before election day. . . Such early voters would have the benefit of news stories and blog postings that the more up-to-date information from candidates, political action committees, parties and caucus committees will generate. If this change had been in effect in 2006, the 21-day pre-primary reports would have included an additional \$2.3 million in expenditures, a 35% increase, and the pre-general elections would have disclosed an additional \$5 million in expenditures, a 40 percent increase over what was reported." House Bill Report, HB 2448.

If Evergreen Progress had followed the law in filing their 21-day report, the voting public would have the benefit of being aware of over \$1 million more in last-minute contributions.

This is a clear violation of the law that merits swift action.

Sincerely,



Timothy Harris
General Counsel
Building Industry Association of Washington